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SUPREME COURT, U.S.
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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 271

NATIONAL BISCUIT COMPANY AND
THE GREAT ATLANTIC & PACIFIC TEA COMPANY,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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By order dated October 13, 1958, this Court denied the petition filed in this case for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit. At that time, other cases were pending involving the identical issues presented in this case, in which notices of appeal had been filed in the Courts of Appeals for the Seventh and

Eighth Circuits.* (See Brief Of The United States In Opposition, page 12, note 7.) Since then, we are informed that the appeals in the Seventh Circuit are about to be perfected by filing the record in that court, and we are informed that the appeals in the Eighth Circuit will be similarly perfected shortly.

Petitioners believe that the Courts of Appeals of the Seventh and Eighth Circuits may well reach a result contrary to that which the Court of Appeals for the Fourth Circuit reached in this case. In that event should the Government petition for certiorari and should the petition be granted (if for no other reason than to reconcile a conflict of decisions among the Circuits), and should this Court on review of the case reach a conclusion opposite to that reached in the Court of Appeals for the Fourth Circuit, your petitioners would find themselves in the position of having paid judgments which this Court had subsequently held to have been erroneously entered against them.

Your petitioners respectfully submit that the fact that the Government has selected their cases as "test cases," and has succeeded in having them determined first should not deprive petitioners of the right to urge as a ground for

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* No appellate docket numbers have as yet been assigned to these cases, but their names and civil action numbers in the District Courts were as follows: Seventh Circuit cases (from the United States District Court for the Western District of Wisconsin): *Kraft Foods Company of Wisconsin and The Borden Company v. Commodity Credit Corporation*, No. 2820; *The Cudahy Packing Company v. Commodity Credit Corporation*, No. 2821; *Armour and Company and The Berst-Corporation v. Commodity Credit Corporation*, No. 2822; *Safeway Stores, Incorporated v. Commodity Credit Corporation*, No. 2824; *H. J. Heinz Company v. Commodity Credit Corporation*, No. 2827; *L. D. Schreiber & Co., Inc. v. Commodity Credit Corporation*, No. 2830; *United States of America v. H. J. Heinz Company*, No. 2889; Eighth Circuit case (from the United States District Court for the District of Minnesota): *Land O'Lakes Creameries, Inc. v. Commodity Credit Corporation*, No. 5521.

review any conflict of decisions among the Circuits which may hereafter arise. Nor do petitioners believe that they should be required to refund the sums paid to them in good faith by the Department of Agriculture until this Court has finally determined that the disputed transactions were not authorized by the Agricultural Act of 1949, or until all possibility of review of that question by this Court has been eliminated.

For these reasons petitioners pray this Court to vacate its order of October 13, 1958, and to hold their petitions for a writ of certiorari *sub curia* pending the determination of the cases in the Seventh and Eighth Circuits and of any applications for review thereof which may be addressed to this Court.

Respectfully submitted,

WILLIAM L. MARBURY,

JOHN MARTIN JONES, JR.,

Attorneys for Petitioners.

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY, that the foregoing petition for rehearing is presented in good faith and not for the purpose of delay (other than to the extent implicit in our request that the original petition be held *sub curia* as stated herein), and is restricted to grounds specified in Rule 58 of the Rules of this Court.

WILLIAM L. MARBURY.